IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2079 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

THAKORBHAI BUDHIYABHAI PATEL

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 2079 of 2003

MR NM KAPADIA for Petitioner No. 1

MR VM PANCHOLI AGP for Respondent No. 1-3

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 04/06/2003

ORAL JUDGEMENT

By filing the present petition by the brother-in-law of the detenu the order of detention dated

1.1.2003 is challenged. Pursuant to the aforesaid order of detention the detenu is detained by the Commissioner of Police, Surat City, in exercise of powers conferred on him by sub-section (2) of Section 3 of the Gujarat Prevention of Antisocial Activities Act, 1985 (the 'Act' for short).

2 The grounds of detention indicate that the detaining authority has taken into consideration two cases registered against the detenu with Umra Police Station for contravention of the provisions of Bombay Prohibition Act, 1949, while forming subjective satisfaction that the detenue is a "bootlegger" within the meaning of Sec.2(b) of the Act.

3 At the time of hearing of the present petition it is argued by the learned advocate for the petitioner that there is a delay in passing the order of detention. It is submitted that the last registered case against the detenu was of 10.10.2002 and the order of detention was passed more than two and half months thereafter as the same was passed on 1.1.2003. It is submitted that if really the activities of the detenu are required to be curbed and it was not necessary to wait for such a long time, as delay in passing the order of detention may frustrate the entire object of preventive detention. The learned counsel for the petitioner has relied upon the decision of this Court (Coram: R.P. Dholakia, J.) in Special Civil Application No.5321 of 2002, more particularly, para 4 of the said petition, which reads as under:-

> "4. It appears that the last offence is registered against the detenu on 28.3.2002 and the order of detention has been passed on 30.04.2002 and hence, there is a delay in passing the order of detention. No affidavit has been filed either by the detaining authority or by the State explaining satisfactorily the delay caused in passing the order of detention. Therefore, in view of the above judgement relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other grounds."

4 It is required to be noted that the detaining authority has not filed any reply to explain the delay caused in passing the order of detention. Since there is no reply on the part of the detaining authority explaining the delay, this aspect of delay has remained

unexplained. Mr Pancholi, learned AGP, has submitted that the statements of the witnesses are recorded at a later point of time and they were recorded on 30th November 2002. However, this aspect was required to be placed on record by filing affidavit-in-reply. Even if the submission of Mr V.M. Pancholi as regards recording of the statements of witnesses is accepted, there is still a delay of about more than one and half months in passing the order of detention. If really the activities of the detenu are required to be curbed, it was necessary to detain the detenu with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, and the order of detention should have been passed immediately. Considering the aforesaid aspects of the matter and considering the delay in passing the order of detention the order of detention is required to be quashed and set aside.

5 In view of the above, the petition is allowed. The order of detention dated 01.01.2003 passed against the detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. is permitted.

(P.B. Majmudar, J.)

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